Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MIGUEL A. RODRIGUEZ,
Petitioner

versus

MUHLENBERG HOSPITAL CENTER,
Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

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I. WHETHER OR NOT AN ELDERLY HISPANIC HOSPITAL SECURITY GUARD PROTECTED BY TITLE VII AND ADEA CAN BE FIRED BECAUSE HE HEROICALLY PROTECTED A NURSE BEING PHYSICALLY ASSAULTED BY A PRISONER-PATIENT MERELY BECAUSE THE HOSPITAL'S CEO TESTIFIED THAT HE FIRED THE ELDERLY HISPANIC FOR STRIKING A PATIENT, WITHOUT ANY INVESTIGATION INTO THE FACTS CONCERNING THE ASSAULT BY THE PRISONER-PATIENT?

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OPINIONS AND ORDERS BELOW

The Order of the United Court of Appeals for the Third Circuit rendered 24, 1999 is unrecorded and appears at page 1a of the Appendix.

The Judgment Order of the United States Court of Appeals for the Third Circuit is unrecorded and appears at page 6a of the Appendix.

The Memorandum Order of the United States District Court for the Eastern District of Pennsylvania dated is unrecorded and appears at page 7a of the Appendix.

The Memorandum Order of the United States District Court for the Eastern District of Pennsylvania dated June 25, 1998 is unrecorded and appears at page 17a of the Appendix.

JURISDICTION

The final order of the Court of Appeals for the Third Circuit dated June 24, 1999. This Petition for Writ for Certiorari is filed timely within ninety (90) days thereof. The jurisdiction of this Honorable Court rests upon 28 U.S.C. §1254(1) and Rule 10(c) of this Honorable Court.

FEDERAL PROVISIONS INVOLVED

Title VII of the Civil Rights Act of 1964, Title VII as amended, 42 U.S.C. §2000(e) et seq. at Appendix page 21.

The Age Discrimination in Employment Act ["ADEA"], 29 U.S.C. §623(a) at Appendix page 21.

CONCISE STATEMENT OF FACTS

Miguel A. Rodriguez is an Hispanic male born in Puerto Rico in September 1936. In 1984, Muhlenberg Hospital hired Mr. Rodriguez to work as a security guard. As an elderly Hispanic male, Rodriguez was protected under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C §2000(c) et seq. and the Age Discrimination in Employment Act, 29 U.S.C. §621-34.

Muhlenberg Hospital had written policies specifically detailing the appropriate force for a security officer to use against an unruly patient in a "code green" situation. Appendix 3a. These policies provided that a security officer was supposed to protect the nurses, and not abuse or fight with the patients. The policy also provided that a security officer was entitled to use force in self-defense, and the policy mirrored the language of the Pennsylvania Crimes Code concerning self-defense, 18 Pa. C.S.A. §505-06. Appendix 3a. ("A security officer may use force against a person whom he reasonably believes such force is necessary for self-defense"). The written policies do not provide that a security officer for Muhlenberg is never supposed to use force against a hospital patient in any circumstances.

On October 28, 1995, Officer Anthony Lopsonzski of the Northampton County Police Department arrested an unconscious male asleep at the wheel of a running car with an empty bottle of liquor in the car. The officer took the arrestee to Muhlenberg Hospital for a blood-alcohol test. Appendix 7a.

Upon arriving at the Muhlenberg Hospital Emergency Room, Officer Lopsonzski informed the hospital personnel that the intoxicated person had a history of being violent when intoxicated. Officer Lopsonzski informed hospital personnel to exercise caution when dealing with this intoxicated patient. Due to this information, the intoxicated

patient was placed in soft restraints onto a bed. Donna Beahm, a nurse, remained in the room with the intoxicated patient, and unrestrained the patient at the patient's request. Donna Beahm told Mr. Rodriguez, who was on duty at that time, that she would call him if she needed assistance with the intoxicated patient. Mr. Rodriguez, returned to the security office a short distance away. Mr. Rodriguez, then almost 60 years old, was 5'4" tall and weighed about 165 pounds while the drunk patient was thirty five years younger than he, about 6'4" tall and over 200 pounds.

Approximately five minutes later, Mr. Rodriguez heard nurses screaming, and immediately ran to the room where the intoxicated patient remained with nurse Donna Beahm. Appendix 15a. Miguel Rodriguez observed the intoxicated patient out of bed and swinging and throwing punches at Donna Beahm. As Mr. Rodriguez dutifully placed his body between the drunk and unruly patient and Donna Beahm, the drunk patient struck Rodriguez in the face, knocking off his spectacles. Mr. Rodriguez then came around the drunk patient's back and tried to get the drunk patient under control. Rodriguez sustained minor injuries from the punch to the face and was treated by an emergency room doctor. The nurses congratulated and thanked Miguel for professionally handling the unruly patient.

No hospital official who was allegedly investigating the incident ever asked Mr. Rodriguez what happened.

"Q. It didn't matter to you as to whether or not anybody even heard Plaintiff's side of the story, correct?

A. What mattered to me was that I was convinced based on the investigation undertaken by various members of hospital personnel that Mr. Rodriguez had struck a patient. I didn't need to have further information, because I don't tolerate that kind of activity."

Testimony by CEO.

BEST AVAILA

Muhlenberg terminated Mr. Rodriguez on November 20, 1995. Appendix 7a. The hospital ultimately replaced him with employees who were substantially younger, and/or non-Hispanic.

In response to a question posed by the trial judge, Mr. Mason testified that under absolutely no circumstances would it be appropriate for a security guard at the hospital to strike a patient. Prior to trial, the trial court wrote as follows:

> "Rather than receive a commendation, Rodriguez was fired for violating Muhlenberg's alleged, undocumented policy that under no circumstances should a security officer ever strike or hit a patient. In fact, Muhlenberg's written policy expressly authorizes security officers to "use force against a person when he reasonably believes such force is necessary for self defense, in order to protect himself [or others] from bodily harm." Appendix 18a.

Despite this earlier reading, at the close of Plaintiff's evidence, Defendant moved for judgment as a matter of law under Fed.R.Civ.P. 50, on the grounds that Plaintiff had not put forth enough evidence that Defendant's proffered reason for termination was pretextual. Following oral argument on October 16, 1998, the district court granted the motion for judgment as a matter of law. The District Court inexplicably reversed its own finding at the summary judgment stage. Appendix 7a v. Appendix 17a. Upon appeal, the United States District Court of Appeals for the Third Circuit affirmed the district court order adopting the "subjective test" articulated by the hospital CEO, namely, it did not matter that

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the CEO violated hospital policy regarding hospital policy on use of force, or that the CEO did not know the true facts of the incident. The fact that the CEO fired the security guard for striking a patient could not be attacked as pretextual because the CEO believed that the security guard struck a patient:

> "The evidence clearly shows that the CEO fired Rodriguez because he believed that Rodriguez had punched a patient."
>
> Opinion and Order, Court of Appeals 42.

The question to be decided by this court is whether a subjective belief concerning the articulated legitimate business reason contrary to established facts is sufficient to defeat a claim under Title VII on ADEA.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

Review by certiorari is appropriate in the case at bar under Rule 10(c) of the Rules of the United States Supreme Court in that a United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Honorable Court.

I. WHETHER OR NOT AN ELDERLY HISPANIC HOSPITAL SECURITY GUARD PROTECTED BY TITLE VII AND ADEA CAN BE FIRED BECAUSE HE HEROICALLY PROTECTED A NURSE BEING PHYSICALLY ASSAULTED BY A PRISONER-PATIENT MERELY BECAUSE THE HOSPITAL'S CEO TESTIFIED THAT HE FIRED THE ELDERLY HISPANIC FOR STRIKING A PATIENT, WITHOUT ANY INVESTIGATION INTO THE FACTS CONCERNING THE ASSAULT BY THE PRISONER-PATIENT?

In dismissing the elderly Hispanic employee's claim the Court of Appeals opinion held as follows:

> "The evidence, clearly shows that the CEO fired Rodriguez because he believed that Rodriguez had punched a patient. Rodriguez therefore has no ADEA or Title VII claim." Court of Appeals Opinion 42 of June 24, 1999

The Court of Appeals subjective test provides a simple method for employers to obliterate the protection of ADEA and Title VII, namely, the subjective belief of the CEO is controlling, not the objective facts. Using such a subjective test, an employer may always terminate a protected employee based upon false reports to the CEO which comes from biased sources. Once the CEO testifies at trial that he

believed grounds existed to terminate the protected employee irrespective of objective facts and appellate both the trial court created an irrebuttable presumption was that the articulated legitimate business reason was valid. Mr. Rodriguez thus seeks review of the Court of Appeals opinion, which provides to corporate employers as immunity not intended by the Legislature or this Honorable Court.

As the Court of Appeals correctly noted, the parties agreed that Mr. Rodriguez asserted a prima facie case under ADEA and Title VII by showing that: "(1) he is an Hispanic male Title VII over forty (ADEA), (2) qualified for the position, (3) who was dismissed despite being qualified and (4) was replaced by a person sufficiently younger to allow an inference of age discrimination (ADEA) and outside of the protected racial class (Title VII). Appendix page 2a (citations omitted).

Upon the showing of a prima facie case, the burden shifted to the employer to "articulate some legitimate, nondiscriminatory reason for the employee's rejections." McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). Employer's CEO claimed he believed that Mr. Rodriguez punched a patient, justifying termination. Mr. Rodriguez was obligated to demonstrate that the hospital's proffered reason for termination was unworthy of credence. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 256, 101 S.Ct. 1089, 1095 (1981).

By accepting the subjective belief of the CEO as an irrebuttable presumption of a legitimate business reason, despite an objective reality for that belief, the Court of Appeals interjected an impossible burden of proof on the employee and eviscerated the statutory protection given the employee by Federal Law.

Here, the hospital failed to conduct any real investigation into the circumstances surrounding Mr. Rodriguez' alleged misconduct in attempting to subdue a

young, unruly patient. Indeed, the CEO testified that the reason for hitting the patient (protecting the nurse from a physical assault) was irrelevant.

Here, the hospital made a calculated decision not to obtain complete information regarding the altercation which led to Mr. Rodriguez's termination.

The alleged "victim of patient abuse at the hands of plaintiff" never complained about or filed a report against plaintiff and no one in defendant's organization ever contacted the "alleged victim" regarding abuse by plaintiff.

The events leading to plaintiffs termination transpired after Sergeant Lopsonzaski delivered an extremely intoxicated male, with known vicious propensities to the Emergency Room (ER), which predictably led to the drunk's attack upon various nurses and a security guard. Out of the drunk's attack upon various staff originated the routine report concerning the unruliness of the patient. From this report, Defendant described how it "sprang" into action and attempted to escalate one incident report which did not target Mr. Rodriguez into a legitimate reason to terminate him.

The hospital's after-the-fact justification/explanation of an alleged "investigation" is unworthy of credence. The CEO testified that the fact of punching the patient was the only relevant criteria, not the fact that the hitting may have occurred in self-defense.

Obvious weaknesses and deficiencies exist in defendant's proffered legitimate reason for termination. Once the trial court and the Court of Appeals applied the "subjective test" to the CEO's stated reason, then it created an absolute defense to the claim under Title VII and ADEA.

As a matter of binding precedent, this Honorable Court has held that the fact-finder's disbelief of the reasons proffered by the hospital (particularly if disbelief is accompanied by suspicion of mendacity), may, together with the elements of a prima facie case suffice to show intentional

discrimination. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 510-11, 113 S.Ct. 2742, 2749, 125 L.Ed.2d 407 (1993).

Here, defendant never bothered to conduct an investigation. Defendant never spoke to nor obtained statements from the majority of eyewitnesses. The "subjective belief" test applied to the CEO created an irrebutable presumption of a legitimate business reason. That test must be stricken down by this Honorable Court.

At the trial in this matter, the decision-maker who terminated Mr. Rodriguez, CEO William Mason, testified that he did not consider the circumstances of the incident. Mr. Mason testified that he did not need to know anything else about the incident, other than that the alleged investigation disclosed that Miguel Rodriguez punched a patient:

Q. It didn't matter to you as to whether or not anybody even heard [plaintiff's] side of the story, correct?

A. What mattered to me was that I was convinced based on the investigation undertaken by various members of hospital management personnel that Mr. Rodriguez had struck a patient. I didn't need to have further information, because I don't tolerate that kind of activity.

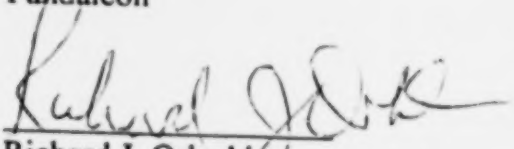
At very least, genuine issues of material fact existed precluding judgment as a matter of law.

The Court of Appeals order and opinion thus ought to be reviewed by the Honorable Court because the Court of Appeals adopted a new test never articulated by this Honorable Court and contrary to accepted and binding precedent written by this Court for employers to obliterate the protection of ADEA and Title VII.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari ought to be granted.

Respectfully submitted,
Orloski, Hinga &
Pandaleon



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